

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HAWAII EMPLOYERS' MUTUAL)	CIVIL NO. CV 06-00668 JMS BMK
INSURANCE COMPANY, INC.,))
)))
Plaintiff,))	FINDING & RECOMMENDATION
))	THAT PLAINTIFF'S MOTION FOR
vs.))	DEFAULT JUDGMENT BE
))	GRANTED
GLOBAL HORIZONS, INC.,)))
)))
Defendant.)))
)))

**FINDING & RECOMMENDATION THAT PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT BE GRANTED**

Plaintiff Hawaii Employers' Mutual Insurance Company, Inc.'s ("HEMIC") Motion for Default Judgment, filed February 4, 2008, came on for hearing before the Honorable Magistrate Judge Barry M. Kurren on February 28, 2008 at 9:30 a.m. Charles A. Price appeared on behalf of HEMIC. No one appeared on behalf of Defendant Global Horizons, Inc. ("Global") and there was no written opposition to the Motion.

HEMIC is a Hawaii corporation with its principal place of business in the State of Hawaii, while Global is a California corporation with its principal place of business in the State of California. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. HEMIC, as insurer, filed a Complaint on December

19, 2006 seeking to recover premiums owed under two workers' compensation insurance policies covering Global, as insured.

Global obtained workers' compensation insurance for its Hawaii employees under HEMIC Policy No. WC-100-0010892-2003A for the period May 16, 2003 - May 16, 2004 and HEMIC Policy No. WC-100-0010892-2004A for the period May 16, 2004 until cancelled effective January 10, 2005.

Under the HEMIC policies, the premiums are calculated based upon specified rates in the policies that are applied to Global's payroll. At the beginning of the policy period, an estimated premium was calculated and paid based upon the estimated annual payroll submitted by Global. After the policy period ends, the policy allows HEMIC to audit the Global's records to determine if the actual payroll matches the estimated payroll. If the actual payroll is higher than estimated, then more premium is owed.

For HEMIC, because it is the insurer of "last resort," meaning that it cannot refuse and is statutorily required to insure all qualified employers, HEMIC is statutorily allowed for certain insureds to charge a high risk surcharge based upon a high risk surcharge formula that is approved and filed with the State Insurance Commissioner. *See generally*, HRS § 431:14-104(e) (allowing surcharges for

employers in the high risk division). For the second 2004A policy at issue in this case, a high risk surcharge applied and was included in the HEMIC policy.

In 2006, HEMIC received from Global records showing its actual payroll for the years 2003 and 2004 . The actual payrolls were much higher than the Global's estimated payrolls. For example, for the 2003A policy time period, Global's estimated payroll was \$375,000, but its audited actual payroll was \$2,065,171, over five times higher. HEMIC's auditor relied on the payroll information provided and certified by Global.

The Court FINDS that under the relevant policies, Global owes HEMIC a total of \$487,192.00 (\$77,890.00 (2003A policy) + \$409,302.00 (2004A policy) = \$487,192.00). Having considered the Motion and its supporting Memorandum, Declaration, and Exhibits, there being no opposition, and for good cause, default having been entered on January 18,2007, the Court hereby RECOMMENDS that HEMIC's motion for default judgment in the amount of \$487,192.00 be granted.

HEMIC also requests pre-judgment interest in the amount of 10% per year, running from the date of Global's breach on November 3, 2006, to the present. Prejudgment interest is awarded at the discretion of the Court, however, and the Court RECOMMENDS that HEMIC be awarded pre-judgment interest only from the

date the action was filed until the present. When this prejudgment interest is factored in, HEMIC's total award is increased to **\$550,589.81.**¹

HEMIC may also seek to recover its attorney's fees and costs by filing an appropriate motion after entry of this Order and a Judgment.

IT IS SO FOUND & RECOMMENDED.



/s/ Barry M. Kurren
United States Magistrate Judge
Dated: March 31, 2008

¹ $(\$487,192 + (\$487,192.00 \times 10\%)) = \$535,911.20$
 $\$535,911.20 + (\$535,911.20 \times 100 \text{ days}/365 \text{ days} \times 10\%) = \$550,589.81$

HEMIC v. Global Horizons; Civ. No. 06-00668 JMS-BMK; FINDING AND RECOMMENDATION THAT PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT BE GRANTED.

